REMARKS

In the foregoing amendments, claims 2-11 were canceled and claim 12-19 were added to the application. Claim 1 was previously canceled. Accordingly, claims 12-19 are in the application for consideration by the examiner. The correlation between the new claims and the previously presented claims is set forth below, where the previously presented claim number appears on the left and the new claim number appears on the right:

Previously Presented Claim	New Claim
2	12
4	13
5	14
6	15
8	16
9	17
10	18
11	19.

The new claims better define that the presently claimed invention includes and/or measures different types of data. One type of data being operator data that is suitable for operators of the construction machine and includes a work process chart that sets forth scheduled works to be done and work performance results in a construction site. Another type of data being simplified/processed data, which is the operator data changed and made suitable for people in the neighborhood of the construction site by a data processing device. In addition, the new claims better define that the data display screen is arranged to face toward an outside of the construction

machine, and that the data display screen displays the simplified/processed data so that the simplified/processed data is readable from the outside of the construction machine. These structures are described in applicant's specification disclosure from page 2, line 24, through page 3, line 8; page 78, lines 18-24; page 79, lines 5-10; page 82, lines 13-18; and elsewhere.

The Official action set forth a rejection of claims 2-3, 6-7, and 10-11 under 35 U.S.C. § 103(a) as being unpatentable over U.S. patent No. 6,643,582 of Adachi *et al.* (Adachi) in view of U.S. patent No. 6,411,205 of Reid. The statement of this rejection is set forth on pages 2-4 of the Official action. Claims 4 and 8 were rejected under 35 U.S.C § 103(a) as being unpatentable over Adachi in view of Reid in further view of U.S. patent No. 6,041,657 of Sutherland. The statement of this rejection is set forth on pages 5 and 6 of the Official action. Claims 5 and 9 were rejected under 35 U.S.C § 103(a) as being unpatentable over Adachi in view of Reid in further view of U.S. patent No. 4,845,629 of Murga. The statement of this rejection spans pages 6 and 7 in the Office action.

Applicant respectfully submits that the teachings of Adachi either alone or together with those of Reid, Sutherland, and Murga do not disclose or suggest the invention as set forth in claims 12-19 within the meaning of 35 U.S.C. §102 or 35 U.S.C. §103.

While the teachings of Adachi may be concerned with construction machines, those of Reid, Sutherland and Mura have nothing to do with

construction machines. For example, the teachings of Read relate to racing vehicles, the teachings of Sutherland concern a fixed system for outdoor sites, and the teachings of Murga relate to a fixed measuring system for airports. Applicant's claims define, *inter alia*, a display device that is arranged in a construction machine and that includes a memory device, a data retrieving device, a data processing device, a data display screen, a measuring instrument for measuring noise levels, and/or a measuring instrument for measuring toxic substances concentrations. Since the teachings of Reid, Sutherland, and Murga are concerned with devices different than those in the present claims, as well is that proposed by Adachi, applicant respectfully submits that the teachings of Reid, Sutherland, and Murga cannot possible motivate one of ordinary skill in the art to modify the completely different device proposed by Adachi or as required by applicant's claims, so as to arrive of the presently claimed invention.

For such reasons, applicant respectfully submits that the teachings of Adachi are not properly combinable with those of Reid, Sutherland, and Murga. Such an impermissible combination of references cannot establish a *prima facie* case of obviousness within the meaning of 35 U.S.C. §103. See, for example, *In re Wesslau*, 147 USPQ 391 (CCPA 1965).

As mandated in *Ashland Oil Company, Inc. v. Delta Resins Factories*, 227 USPQ 657, 667 (Fed. Cir. 1985) the decision maker must provide a factual basis for the legal conclusion of obviousness as follows:

> To properly combine references A and B to reach the conclusion that the subject matter of a patent would have been obvious, case law requires that there be some teaching, suggestion, or inference in either reference A or B or both, or knowledge generally available to one of ordinary skill in the relevant art, which would have lead one skilled in the art to combine the relevant teachings of references A and B. [citations omitted] The decisions maker's determination as to what objective evidence in reference A or B, or both, or knowledge generally available to one of ordinary skill in art is the nature of a factual finding.
>
> The decision maker, however, after making findings as to the objective evidence, must subjectively analyze these factual findings to determine whether the teachings of references A and B could have been combined. Thus, the ultimate determination as to whether references could have been combined in a legal conclusion.

The *Ashland Oil* court also obligated the decision maker to explain the decision, by setting forth the teachings from the references that were relied on as a factual basis in reaching the conclusion of obviousness. The Court stated:

> The District Court did not elucidate any factual teachings, suggestions, or incentives from this prior art that show the propriety of combination, nor in fact did the District Court even point out what teachings from each of the references, when considered in combination, were relied upon in concluding that the invention of claim 10 would have been obvious. Nor apparently did the District Court give any consideration to teachings in those references which would have lead one of ordinary skill in the art away from the invention of claim 10. We would have to say that the District Court used claim 10 of the '797 Patent as a blue print and abstracted individual teachings from the Rothrock patent, Megson, and Maktin to create the Pep resin of claim 10. [citation omitted] <u>This was error as a matter of law.</u> (emphasis added)

In support of the above, the Court cited the cases of *ACS Hospital Systems v. Montefiore Hospital*, 221 USPQ 929, 933 (Fed. Cir. 1985); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 220 USPQ 303, 311, 312 (Fed. Cir. 1983); and *In re Sernaker*,

217 USPQ 1, 5 (Fed. Cir. 1983), which have frequently been cited by the Federal Circuit for supporting the above well-established principles.

Applicant respectfully submits that the prior art rejections of the present claims does not elucidate any factual teachings, suggestions or incentives from the teachings of Reid, Sutherland, and Murga to show the propriety of their combination with the teachings of Adachi. Further, the Official action has not given any consideration to the teachings in these references that would have lead one skilled in the art away from the invention as defined in the present claims. Accordingly, applicant respectfully submits that the Official action has not complied with the mandate set forth in *Ashland Oil.* Moreover, the Official action has failed to satisfy the burden of establishing a *prima facie* case of obviousness by showing some objective teaching or generally available knowledge that would lead one skilled in the art to combine the teachings of the cited references. See *In re Fine,* 5 USPQ2d 1596 (Fed. Cir. 1988). For such reasons, applicant respectfully requests that the examiner reconsider and withdrawal all of the prior art rejections of the present claims over the teachings of Adachi, Reid, Sutherland, and Murga.

In addition, applicant respectfully submits that the display device proposed by Adachi is a display device that is provided within a construction machine, and is designed to display data suited for operators to confirm data such as work performance results. Adachi does not contemplate art suggests a display screen that is arranged to face toward an outside of the construction

machine, where the display screen displays simplified/process data suited for people in the neighborhood of the construction site so as to be readable from the outside of the construction machine. Furthermore, the teachings of Adachi do not contemplate or suggest the measurement and use of different types of data, as presently claimed. One type of presently claimed data is operator data that is suitable for operators of the construction machine and includes a work process chart that sets forth scheduled works to be done and work performance results in a construction site. Another type of presently claimed data is simplified/processed data that is the operator data that is changed and made suitable for people in the neighborhood of the construction site by a data processing device. In addition, the teachings of Adachi do not contemplate or suggests that the data display screen is arranged to face toward an outside of the construction machine, and the data display screen displays the simplified/processed data so that the simplified/processed data is readable from the outside of the construction machine, as presently claimed.

The teachings of Reid, Sutherland, and Murga do not cure or rectify these deficiencies in the teachings of Adachi. Reid, as shown in Figs. 2 and 3, proposes a display screen (31) arranged to face toward an outside of a racing vehicle. However, the display device 31 proposed by Reid, as shown in Fig. 12 therein, displays digits "1234" set by the switch 95. Accordingly, the screen proposed by Reid cannot contemplate or suggests a display device displaying the operator data including a work process chart suited for operators (i.e.,

understandable by only operators of construction machines and supervisors thereof) that is processed into simplified data, which is operator data changed and made suitable for people in the neighborhood of the construction site, as presently claimed. The display device 31 of Reid can merely display 4 digits or letters, but cannot display complicated data such as the operator data, including a work process chart that sets forth scheduled works to be done and work performance results in the construction site, as required by the present claims.

In fact, none of the teachings cited against applicant's claims remotely contemplate or suggest important aspects of the presently claimed invention, namely, the processing of operator data (i.e., understandable by only operators of construction machines and supervisors thereof), such as data in a work process chart that sets forth scheduled works to be done and work performance results in the construction site, into simplified data -- which is operator data that has been changed into data suitable for people in the neighborhood of the construction site, and is displayed on the display device. Therefore, applicant respectfully submits that the presently claimed invention is distinguishable from all teachings cited thereagainst in the outstanding Office action.

Concerning claims 4, 5, 8, and 9 (new claims 13, 14, 16, and 17), the Official action stated that Adachi discloses a display device of construction machine, Reid discloses the display screen is displayed outside of the vehicle,

and Sutherland discloses an apparatus having the level equivalent average noise generated by work implement under specified conditions by a working machine. Further, the Official action stated that Murga discloses an automatic system for surveillance having toxic substance.

However, applicant respectfully submits that the teachings of Sutherland simply propose a noise level measuring system for outdoor sites. In Sutherland, sound measurement assemblies 12a-12f are installed at fixed points in an outdoor site. Therefore, if the outdoor site such as a construction site for a construction machine is changed, the sound measurement assemblies must be installed in a new construction site.

In the invention recited in new claims 13 and 16, on the other hand, a measuring instrument for measuring noise levels is arranged in the construction machine. Therefore, even if a construction site for a construction machine is changed, it is not necessary to install the measuring instrument in a new construction site, and data on noise level can be provided for people in the neighborhood of the new construction site without making any effort to install the measuring instrument in the new site. Thus, the presently claimed invention provides significant advantages over the system proposed by Sutherland.

Similarly, Murga simply proposes a toxic substance concentration measuring system for airports. In Murga, toxic substance concentration measuring sensors are installed at fixed points in an airport. Therefore, if a

construction site for a construction machine is changed, the sensors must be installed in a new construction site.

In the invention recited in claims 14 and 17, on the other hand, a measuring instrument for measuring toxic substance concentrations is arranged in a construction machine. Therefore, even if a construction site for a construction machine is changed, it is not necessary to install the measuring instrument in a new construction site, and data on toxic substance concentrations can be provided for people in the neighborhood of the new construction site without making any effort to install the measuring instrument in the new site. Thus, the presently claimed invention provides significant advantages over the system proposed by Murga.

Additional arguments distinguishing the presently claimed invention from the teachings of Adachi, Sutherland, and Murga were set forth in applicant's response after final filed on March 16, 2004, which arguments are incorporated herein by reference.

In view of the foregoing amendments and remarks and the arguments set forth in applicant's response after final filed on March 16, 2004, favorable consideration and a formal allowance of claims 12-19 are respectfully requested. While it is believed that the present response places the application in condition for allowance, should the examiner have any comments or questions, it is respectfully requested that the undersigned be telephoned at the below listed number to resolve any outstanding issues.

In the event this paper is not timely filed, applicant hereby petitions for an appropriate extension of time. The fee therefor, as well as any other fees which may become due, may be charged to our deposit account No. 22-0256.

Respectfully submitted,
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